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SUMMARY RECORD OF THE 1040th MEETING

Held at Headquarters, New York,
on Tuesday, 26 March 1991, at 3 p.m.

Chairman: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

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The meeting was called to order at 3.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Second periodic report of India (continued) (CCPR/C/37/Add.13)

1. At the invitation of the Chairman, Mr. Ramaswamy (India) took a place at the Committee table.

2. The CHAIRMAN said that the Indian delegation would proceed to answer questions held over from section I of the list of issues.

3. Mr. RAMASWAMY (India), replying to a question about the status of the Covenant in India with regard to the right of self-determination, said that, in India, principles of international law had no effect unless they constituted the law of the land. In practice, the rights embodied in the international principles underlying the Covenant were already guaranteed by Indian law.

4. Replying to the question concerning the scope of India's reservation to the Covenant on the question of self-determination, he stressed that territorial integrity and sovereignty must be the basis for that right. By definition, a group of people within a sovereign territory could not break away and form another nation. The Covenant, in the second sentence of article 1, clearly placed the right of self-determination in that context. That understanding was also contained in the International Covenant on Economic, Social and Cultural Rights.

5. He drew attention to paragraph 11 of the report, which quoted the text of India's reservation and made it clear that the term "self-determination" did not apply to citizens within Indian territory, but rather only to those living outside the territory of India under foreign domination.

6. The questions raised concerning the Armed Forces (Special Powers) Act also reflected a misunderstanding of the scope of that Act. The Indian Government had reason to believe that the agitation for secession in certain border states was being aided and abetted by foreign elements infiltrating into Indian territory. Referring to article 355 of the Indian Constitution on the protection of states against external aggression, he said that the maintenance of law and order under such circumstances must be enforced on a "war footing". Following alarming reports from those states, more stringent measures had become necessary in order to protect innocent people from being killed by terrorists.

7. Members of the Committee who had been provided the text of the Assam Police Powers Act by non-governmental organizations had not been fully informed about the nature of that legislation. Section 3 of the Act vested the power to declare a state a "disturbed area" in the Governor. If misused, that power was subject to judicial review. Section 4 (a) of the Act, which empowered the Governor to order the "use [of] force, even to the causing of death, against any person who was

(Mr. Ramaswamy, India)

acting in contravention of any law ... in force in the disturbed area" prohibited the assembly of five or more persons carrying firearms, ammunition or explosives. However, that prohibition could be exercised only after due warning was issued. It was in conformity with an older Indian law which authorized private citizens to retaliate in self-defence even if that meant shooting another person to death.

8. Once a person surrendered under the Armed Forces (Special Powers) Act, the army did not retain control over him but rather turned him over, along with any weapons or explosives found on his person, to the police, i.e., the civil authorities, at which stage the Code of Criminal Procedure applied. Moreover, when emergency police powers had gone into effect in Assam, a number of public interest lawyers had entered complaints of human rights violations before the high courts and relief had been granted.

9. The question had been raised as to whether a law sanctioning the right to shoot was not in violation of the Constitution and article 21 of the Covenant. The validity of the Armed Forces (Special Powers) Act had been challenged in the Assam courts as early as 1983. The case had been transferred to the New Delhi High Court, which had upheld the Act as valid.

10. When he had assumed the position of Attorney General, the Act had again been contested in the high courts, together with certain allegations of human rights violations by the army. He had argued the Government's case before a full bench of judges in the Assam High Court, which had upheld the validity of the Act and declared it binding on the state. As to whether statutory powers had been violated, arguments had been concluded in the high court and judgement had been reserved.

11. In reply to the question concerning public interest litigation in India, the extent to which it differed from the normal judicial procedure, and its relative advantages and disadvantages, he referred to article 32 of the Indian Constitution. Any citizen was entitled appeal directly to the Supreme Court in order to enforce his fundamental rights, including the rights of freedom of movement and expression, equal opportunity before the law and equal opportunity in public employment. In fact, with regard to equality before the law, the Indian Constitution affirmed the right of any member of the public to contest an arbitrary act of the Government which violated his rights. In those cases, the burden of proof was on the State. Where a large group of people could not afford to bring an action, any number of the public could file litigation on their behalf under the system of public interest litigation. In fact, proceedings could be initiated on the basis of an anonymous telephone call or a postcard to the Supreme Court. Moreover, under article 141 of the Indian Constitution, if a principle of law was decided as a result of public interest litigation, it became binding on all courts in the nation. Remedies for more unusual grievances could be pursued through the normal judicial system, where the cost of litigation was relatively low.

12. In reply to the question on how the Armed Forces (Special Powers) Act could be enacted without declaring an emergency (art. 4 of the Covenant), he said that the Act itself made provision for that.

(Mr. Ramaswamy, India)

13. In reply to the question as to where articles 14 and 17 of the Covenant were covered in the Indian Constitution, he said that the Code of Criminal Procedure made article 14 the law of the land. Article 21 of the Indian Constitution provided that no person could be deprived of his life or liberty except according to procedure established by law. In the 1970s, it had been further determined that that procedure should be reasonable, which meant that the concept of "reasonable procedure" could also be challenged in the Supreme Court or the high courts. He wished to add that the Criminal Procedures Code, adopted from the British code, was one of the finest in the world; it guaranteed, inter alia, public and speedy trials and the principle of equality. The principle of equality was further guaranteed by article 14 of the Constitution. Article 17 of the Covenant concerning the right to privacy was embodied in article 19 of the Indian Constitution. It was also guaranteed by the Criminal Procedures Code and other penal statutes governing arrests and search and seizure. Those statutes included a number of safeguards restricting the powers of the police to enter and search private homes.

14. Replying to a question concerning the implementation of legislation, he said that the Criminal Procedures Code was the bedrock of the Indian criminal justice system. In India, human rights violations did not exist per se; they were only violations of rights guaranteed by the Constitution or statutory provisions, for which specific remedies were fully available to all citizens. Therefore, no discrepancy existed between the legal text and actual practice.

15. Replying to a question on whether the Supreme Court and High Courts enjoyed greater confidence than the lower courts, he said that that was indeed the case. Moreover, the lower courts, such as the city civil courts and magistrate courts, had no jurisdiction to rule on the constitutionality of statutes or strike down arbitrary acts by the Government.

16. In response to the question of whether local courts were biased in ethnic terms, he noted that the Indian judiciary was known for its independence. Moreover the issue did not arise since India had no ethnic groups, as the concept was internationally understood.

17. Turning to the question of whether civil and political rights could remain suspended for an indefinite period, he said that the possibility of suspension occurred only in the event of an emergency. In fact the relevant legislation had recently been amended, and it was no longer possible to suspend the rights provided for under article 21 of the Constitution. Any suspension of other rights required presidential action and the approval of the legislature. In view of that procedure, as well as the relevant constitutional provisions, there was no possibility of indefinite suspension of powers.

18. Mrs. HIGGINS said that it was clear that the Terrorist and Disruptive Activities (Prevention) Act and the National Security (Amendment) Act provided for limitations in respect of the right of assembly, the courts and detention. Since those Acts appeared to constitute derogations from the provisions of the Covenant, it would be interesting to know why India had submitted no notification of derogation to the Committee, as it was bound to do under article 4 (3).

19. Mr. LALLAH said that the issue with which the Committee was concerned was the extent to which Indian legislation accorded with the Covenant. It appeared that certain legislation relating to disturbed areas was not in consonance with article 4, although the Indian Government had not submitted any reservation in respect of that article.

20. Mr. RAMASWAMY (India) said that the Constitution of India, which had been adopted as a reflection of the will of the people, predated India's accession to the Covenant. The provision under Indian legislation for preventive detention, a measure accepted under various legal systems, did not in itself constitute a violation of article 4 of the Covenant. Such legislation was generally recognized as being preventive rather than punitive. For example, restraint of the freedom of movement of the individual, as in the case of a fire or crowd control, could be construed as preventive detention, but would plainly not be punitive. With regard to the security of India, the National Security (Amendment) Act authorized preventive detention where a threa existed to the defence or security of India or where an individual entertained relations with foreign Powers, instances which were fully in accordance with standards of international law, particularly when account was taken of the careful scrutiny such cases were accorded by the Supreme Court. In practice, the Supreme Court authorized preventive detention in only a small percentage of cases. There was no doubt that Indian legislation did not contravene article 4 (1) of the Covenant.

State of emergency (article 4 of the Covenant) (section II of the list of issues)

21. The CHAIRMAN read out section II of the list of issues concerning the second periodic report of India, namely: (a) whether the amendments to article 359 of the Constitution made it permissible to derogate in the state of Punjab from the right to life and the prohibition against torture as well as the other non-derogable rights mentioned in article 4 (2) of the Covenant, and, if so, whether the Government of India planned to adopt legislation to make its domestic legal regime in that regard consistent with its obligations under article 4 (2) of the Covenant; and (b) what safeguards and effective remedies were available to the individual during a state of emergency.

22. Mr. RAMASWAMY (India) said that the amendment providing for the suspension of article 21 of the Constitution referring to the right to life, had been superseded and that the position of law in India was in accord with article 4 of the Covenant. Even during a public emergency, the individual enjoyed all the safeguards and remedies that were available at other times.

23. Mr. AGUILAR, noting that paragraph 26 of the second periodic report of India (CCPR/C/37/Add.13), referred to the suspension of constitutional provisions in the event of a proclamation of emergency, asked why the Goverment of India had not notified the Committee of such an important derogation from the Covenant. Notwithstanding the comments by the representative of India, it appeared that the Constitution did, in fact, allow for major derogations from the Covenant, in which case the Committee would wish to know how an Indian citizen could avail him or herself before the courts of the rights provided for under article 4 of the Covenant. Further, it appeared that laws which derogated from the Constitution in

(Mr. Aguilar)

the event of a state of emergency could remain in effect after that emergency had terminated. He would welcome clarification of those points.

24. Mr. MYULLERSON said that the representative of India appeared to be saying that, notwithstanding the enactment of certain legislation in India, no state of emergency existed unless there was a threat to the life of the nation. In fact, an emergency existed, in the terms of the Covenant, whenever there were derogations from its provisions. It would be interesting to know whether the Government of India considered the implementation of the Armed Forces (Special Powers) Act to amount to the existence of a state of emergency. That Act, which authorized the use of force, even to the causing of death, against any person in contravention of any law, and further authorized arrests and searches without warrant, constituted a derogation from several articles of the Covenant. The authorization under the Act for the use of deadly force would appear to be close to constituting a derogation from article 6 of the Covenant, from which no derogation was allowable.

25. Mr. WAKO said that no derogation was possible from the provisions against torture. From his reading of the Constitution of India, there appeared to be no constitutional provision prohibiting torture. The only reference seemed to be in article 21, which guaranteed personal liberty, so that where a person had been detained, thus losing his personal liberty, it appeared possible that torture was theoretically permissible. The report of India noted that violation of personal liberty attracted the provisions of article 14 of the Constitution, given which he wished to know whether there was protection at a constitutional level against torture, or whether such protection was afforded by the courts or other means. In the later eventuality, the question would arise of whether the Constitution was indeed in accordance with article 4 of the Covenant.

26. Mr. RAMASWAMY (India) said that article 4 of the Covenant as such could not be the cause of action before an Indian court, since the Covenant per se was not embodied in Indian legislation. India's position was that its Constitution would guarantee the same rights as those provided for under the Covenant. With reference to the proclamation of an emergency, an individual had recourse to the courts to secure the right to liberty provided for under the Constitution. With regard to the constitutionality of legislation adopted in an emergency, it was possible that such legislation might be in conflict with the fundamental rights of the citizen; if that were the case the legislation would be struck down when the state of emergency was terminated.

27. In reply to Mr. Myullerson's question regarding section 4 of the Armed Forces (Special Powers) Act, he noted that article 6 (1) of the Covenant was limited in its applicability by the inclusion of the word "arbitrarily". Section 4 of the Act did not give army officers the right to fire upon civilians "arbitrarily", but only in extraordinary situations and under specific conditions. Moreover, the application of the Act in the absence of a national emergency was not a violation of article 4 of the Covenant because it was possible for the Government to declare an emergency situation in individual disturbed areas.

(Mr. Ramaswamy, India)

28. In reply to Mr. Wako's question regarding the absence of any prohibition of torture in the Indian Constitution, he noted that prisoners were nevertheless protected against torture because: (1) the prison administration was legally separate from the police force, so that ordinary police officers had no access to jails; (2) there were strict regulations in force regarding the treatment of prisoners; and (3) the Indian Supreme Court had expanded its interpretation of the right to "life and liberty" to include the right to peace and human dignity.

Section III: Non-discrimination and equality of the sexes (articles 2 (1), 3 and 26 of the Covenant)

29. The CHAIRMAN read out section III of the list of issues, concerning: (a) the effectiveness of the special provisions designed to promote the advancement of "any socially and educationally backward classes of citizens or the scheduled castes and the scheduled tribes", along with statistics on the participation of members of those groups and of women in the country's political and economic life; (b) whether the classification of "backwardness" was made solely on the basis of caste; and (c) restrictions on the rights of aliens.

30. Mr. RAMASWAMY (India) said that scheduled castes and scheduled tribes were specified by presidential orders under the provisions of articles 341 and 342 of the Indian Constitution. According to the 1981 census, about 105 million Indians (approximately 23.5 per cent of the population) were members of scheduled castes, while 54 million were members of scheduled tribes. The Government was required by the Constitution to reserve a certain number of posts and a certain number of seats in Parliament and in the state legislatures for members of scheduled castes and scheduled tribes. In addition, a series of five-year plans for the advancement of "backward" classes was a priority element of national policy, and high-level officers were appointed to deal with issues concerning scheduled castes and scheduled tribes and to take action against any violations of the safeguards provided for them under the Constitution. In addition, a national commission for scheduled castes and scheduled tribes acted as an advisory body on broad policy issues involving those groups.

31. Although the Indian Government had drawn up comprehensive guidelines containing preventive, punitive and rehabilitative measures to combat crimes against members of scheduled castes and scheduled tribes, it continued to receive reports of atrocities committed against such persons. In consequence, it had enacted the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, which had come into force on 30 January 1990. The Act specified the offences which were considered atrocities and provided for deterrent punishments for such offences, as well as preventive measures. In addition, states were encouraged to develop schemes for the economic and social rehabilitation of the victims of such offences.

32. Under the Constitution, seats were reserved for members of scheduled castes and scheduled tribes in the Lok Sabha and state legislatures in proportion to their numbers in the general population. That concession, originally granted for a

(Mr. Ramaswamy, India)

period of 10 years from the commencement of the Constitution, had subsequently been renewed every 10 years. There was no reservation of seats in the Rajya Sabha and state legislative councils. Statistics showed that as of 8 January 1990, 120 out of 543 seats were reserved for members of scheduled castes and scheduled tribes in the Lok Sabha, while 1,084 out of 4,047 seats were reserved for members of those groups in the legislative assembly. However, the actual representation of those groups was greater, since the legal measures for their advancement which had been in force for almost 40 years had enabled many members of scheduled castes and scheduled tribes to secure seats in the legislature on their own merits.

33. The Constitution also provided that the claims of members of scheduled castes and scheduled tribes should be taken into consideration in the appointment process for posts and services in connection with national or state affairs. As of 1 January 1989, among employees of the central Government, 18.24 per cent were members of scheduled castes and 4.98 per cent were members of scheduled tribes. As of 1 January 1988, among employees of All India Services (comprising the Indian Administrative Services and the Indian Police Services), over 16 per cent of the employees of each of those services were members of scheduled castes and scheduled tribes.

34. The Ministry of Welfare was responsible for overall policy and for the planning and co-ordination of development programmes for scheduled castes and scheduled tribes. Each central Ministry and department was responsible for sectoral programmes, and the Ministry of Welfare maintained liaison with central Ministries and state governments.

35. There had been a progressive increase in the participation of women in India's economic and political life. According to 1988 statistics, women represented 11.5 per cent of the workforce in the public sector and 18 per cent of the workforce in the private sector. The figures did not reflect the participation of women in the agricultural sector and in basic industries, which represented a significant segment of the Indian economy; in rural areas, virtually all women were employed in those sectors. Although women still represented less than 6 per cent of the employees in the top echelons of public administration, they were legally entitled to take qualifying examinations for such posts, so the low rate of representation of women in that area reflected the fact that relatively few women chose to take the examinations. In the area of politics, women held 26 out of 545 seats in the Lok Sabha as of May 1990 (compared to 14 out of 489 in 1952) and 25 out of 250 seats in the Rajya Sabha (compared to 15 out of 216 in 1952). Although there were no legal obstacles to the participation of women in politics, no seats were specifically reserved for women.

36. With respect to the question of caste as a criterion for "backwardness", it was generally true that historically and socially, certain castes had been considered "backward" in India. He did not wish to elaborate on the question, since related matters were currently before the Supreme Court.

(Mr. Ramaswamy, India)

37. With respect to the treatment of aliens, the Supreme Court had recently ruled that the rights of Indian citizens, and particularly the provisions of article 14 of the Covenant, would also apply to foreigners who were legally in the territory of India, with certain exceptions regarding the acquisition of property.

38. Mr. SADI expressed concern about reports that in India, female fetuses were often aborted because of a cultural tradition which encouraged families to have male children. Although he was sure that Indian law did not condone such a practice, he wondered whether any legal measures or public information campaigns had been instituted to combat that trend, whose prevalence was apparently increasing.

39. Mr. ANDO noted that in paragraph 24 of the report, it was stated that the Equal Remuneration Act had been "modified to prohibit discrimination against women not only in recruitment but also in relation to conditions of service". He wished to know how successful that amendment had been, and whether there was any remedy available for violations of its provisions.

40. Mr. RAMASWAMY (India) agreed that reports of the destruction of female fetuses were alarming, and noted that for the first time, men outnumbered women in India. Under existing law, abortion was illegal in India except under very specific conditions. The Government was currently developing an information campaign against the practice of identifying the sex of fetuses and aborting them on the basis of their sex.

41. In reply to Mr. Ando, he said that the Equal Remuneration Act had been in force for 14 years and that it appeared to be very effective. Any violations of the Act were subject to legal redress, and the extremely limited amount of litigation concerning alleged violations of the Act seemed to indicate that its provisions were rarely violated. The question of equal salary was not a major issue in India because women were employed only in certain job categories; they were not employed to do work for which they were not qualified.

42. Mr. LALLAH said that although Mr. Ramaswamy had indicated that the limited number of women in many job categories was the result of their free choice not to apply for jobs in those categories, it appeared that the judiciary was an area which would appeal to women. He would appreciate some information on the number of women judges and members of the bar in India.

43. Mr. MYULLERSON asked for further details on how membership in scheduled castes and scheduled tribes was determined in individual cases.

44. Mr. RAMASWAMY (India), replying to the question regarding women judges, said that there was one woman judge in the Supreme Court and that women were represented in large numbers in the various High Courts. Efforts were being made to ensure that those numbers were increased throughout the judicial system. Judges were normally recruited from the bar and, while there was no shortage of women members of the bar in urban areas, the proportion was significantly lower in rural areas.

(Mr. Ramaswamy, India)

45. With regard to Mr. Myullerson's question, he said that, prior to the adoption of the Constitution, there had been a system of aid to the scheduled castes and tribes. Subsequently the Constitution had made provision for representation of those castes and tribes in Parliament, and the President had powers to add to the schedule or make deletions from it.

Right to life (article 6 of the Covenant) (section IV of the list of issues)

46. The CHAIRMAN read out section IV of the list of issues concerning the second periodic report of India, namely: (a) the number of persons currently on death row, and the time that normally elapsed between the imposition and execution of the death sentence; (b) whether the death penalty had been extended to new offences since the submission of the initial report; (c) whether the death sentence could be imposed for crimes committed by persons below 18 years of age; (d) the rules and regulations governing the use of firearms by the police and security forces, and whether there had been any violations of those rules and regulations and, if so, what measures had been taken to prevent their recurrence; and (e) what progress had been made in reducing infant mortality in the period under review.

47. Mr. RAMASWAMY (India) said that no information was available regarding the number of persons currently on death row. With regard to the time that normally elapsed between the imposition and execution of the death sentence, he said that a condemned prisoner had a right to appeal to the High Court and to the Supreme Court against a death sentence imposed by a Sessions Court, and that a condemned prisoner could not be executed pending those appeals. Condemned prisoners also had a right to appeal for clemency to the Governor of the particular state under article 161 and to the President of India under article 72 of the Constitution. A recent ruling had established that, if there was an undue delay between sentencing and execution, the Supreme Court could commute a death penalty to a life sentence.

48. The death penalty had not been extended to any new offences since the submission of India's initial report, but the Narcotic Drugs and Psychotropic Substances Act (1985), as amended in 1989, did include the possibility of the imposition of a death sentence for repeat offences under the Act.

49. Under the Juvenile Justice Act (1986), a juvenile delinquent could not be sentenced to death. For the purposes of the Act, a juvenile was a female child who had not attained the age of 18 years and a male child who had not attained the age of 16 years. However, the discrepancy in age was currently under review.

50. Concerning the infant mortality rate, he said that the Government had taken steps to implement a package of activities aimed at setting up a network of primary health care institutions in rural areas and training medical and paramedical workers and traditional birth attendants. The primary health centres and subcentres were providing antinatal and postnatal care, and the immunization scheme had been expanded to provide pregnant mothers and infants with full coverage. Oral rehydration therapy was being promoted as a means of tackling morbidity and mortality due to dehydration in diarrhoea cases. Health education was being

(Mr. Ramaswamy, India)

provided to promote breastfeeding and proper weaning practices, and supplementary nutrition and prophylaxis against nutritional anaemia was gradually being increased under the scheme. The goal of reducing the infant mortality rate to below 60 per 1,000 live births had been set for the year 2000. Provided that the socio-economic conditions of the population, including female literacy and the availability of safe water supplies, improved, that goal would be attainable.

51. Mr. FODOR said that the second periodic report of India had, quite properly, focused on the question of the death penalty, but that the right to life had aspects not confined to article 6 of the Covenant. It would be useful to know what steps the Government was taking to counter the increasingly widespread phenomenon of political killing. According to information available to the Committee several thousand people had lost their lives in ethnic strife, and many had been killed when the security forces had used armed force to suppress protest. Could the representative of India confirm that that information was correct?

52. Referring to paragraph 34 (c) of the report, he asked what procedure was followed in cases where the death sentence was commuted to life imprisonment on grounds of delay. He would also be interested to learn whether the procedure was initiated ex officio by the court or whether it could be initiated by the accused.

53. Mr. AGUILAR said that the report contained no information on the serious derogations of article 6 by State organs and officials which seemed to have taken place on a considerable scale. He was particularly concerned by the many reported instances of "disappearances" and political killings. With regard to demonstrations, he asked whether there had been any formal investigations of deaths occurring when the police opened fire on unarmed demonstrators, and whether the provisions of the Penal Code had been applied.

54. In connection with the death penalty, he would welcome information on the procedures followed by the Supreme Court. He also wondered whether there were any differences in the practice followed by states in the northern and southern parts of the country.

55. Mr. WAKO said that the powers conferred on the authorities by the Armed Forces (Special Powers) Act went well beyond those provided in the Code of Conduct for Law Enforcement Officials, which stipulated that firearms could be used only as an extreme measure and in the event of armed resistance. In particular, article 4 of the Act seemed to be open to abuse.

56. Noting the immunity conferred under article 6 of the Act, he asked what remedies were available in cases in which a law enforcement officer exceeded the terms of his authority, and whether in particular the family of a person killed in the course of a demonstration had the right to sue the Government or the Armed Forces.

57. Turning to the question of deaths in custody, he asked whether the Government had taken steps to prevent what seemed to be a widespread abuse, and whether any proceedings had been initiated against police officers involved in such cases.

(Mr. Ramaswamy, India)

58. Finally, he said that he would be grateful for more information on the incidence of "dowry deaths", which seemed to be on the increase despite the Government's efforts to eradicate the problem, and on the practice of suttee.

59. Mr. LALLAH said that there seemed to have been no reply so far from the representative of India regarding the question of the rules and regulations governing the use of firearms by the police and security forces.

60. Referring to the comments made by Mr. Wako, he said that he would welcome clarification regarding the circumstances in which firearms could be used by law enforcement officers. He also wished to know whether the definition of an "assembly" within the terms of the Armed Forces (Special Powers) Act covered gatherings in private homes.

61. In conclusion, he said that the immunity conferred by article 6 of the Act seemed very dangerous in that it gave the central Government very wide discretionary powers vis-à-vis the right to life.

62. Mr. MYULLERSON said that, while recourse to the use of force could be legitimate in combating terrorism, it could not be justified against unarmed demonstrators. He wondered whether the Code of Conduct for Law Enforcement officials, and other related documents, were widely known in law enforcement circles in India.

The meeting rose at 6 p.m.